



EMTALA Compliance: Medical Screening Examinations

Paul Hudson, Vice President

The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law enacted by Congress in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (42 U.S.C. §1395dd). Referred to as the "anti-dumping" law, it was designed to prevent hospitals from refusing to treat patients or transferring them to charity or county hospitals because they were unable to pay or had Medicaid coverage.¹

Hospitals have three basic obligations under EMTALA. First, they must provide all patients with a Medical Screening Examination (MSE) to determine whether an Emergency Medical Condition (EMC) exists. Second, where an emergency medical condition exists, they must either provide treatment until the patient is stabilized, or if they do not have the capability, transfer the patient to another hospital. Third, hospitals with specialized capabilities are obligated to accept transfers if they have the capabilities to treat them. Medical care cannot be delayed by questions about methods of payment or insurance coverage.¹

It is the purpose of this document to focus on one specific portion of these responsibilities: the Emergency Department Physician's role in providing the EMTALA-mandated Medical Screening Examination and the determination of whether an Emergency Medical Condition exists.

The following is an excerpt from the statute: *"In the case of a hospital that has an emergency department, if any individual (whether or not eligible for Medicare benefits and regardless of ability to pay) comes by him or herself or with another person to the emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition by qualified medical personnel (as determined by the hospital in its rules and regulations), the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists."*²

There is universal acceptance that an Emergency Department Physician (EDP) is regarded as "qualified medical personnel". Therefore, when on duty, the EDP is responsible for providing each patient an appropriate Medical Screening Examination (MSE). Triage information and the nursing assessment can contribute to the physician's screening examination; however neither are acceptable substitutes for direct physician involvement in the MSE. Since the purpose of the MSE is to determine whether an

emergency medical condition exists, the screening examination must be detailed enough to accomplish this objective.

This examination should include obtaining an appropriate medical history, physical examination, diagnostic testing, including consultations with pertinent on-call physicians or other health care providers, and interval assessments prior to discharge/transfer. This remains an ongoing process until such time as the patient has been stabilized, discharged or transferred. This process must be clearly and completely documented in the patient's medical records.³

An Emergency Medical Condition is defined in the regulations as *"a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health [or the health of an unborn child] in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs."*⁴

If a determination is made that the individual has an Emergency Medical Condition (EMC), the hospital must either stabilize the individual or undertake an appropriate transfer. EMTALA obligations are also met when a patient, who has been seen and screened for an EMC in the emergency department, is admitted as an inpatient for hospital services (unless the admission is made in order to avoid EMTALA liability). If no emergency medical condition exists or the emergency medical condition has been stabilized, then the hospital has no further obligation under EMTALA.⁵

Some hospital emergency departments are performing "no-frills" Medical Screening Examinations (MSE's) on patients with minor ailments and then asking for payment information if there is no Emergency Medical Condition, all within the limits of EMTALA. Use of these specialized MSE's is aimed at improving the financial picture for the hospital involved and dissuading patients from treating the ED like a clinic without illegally spurning true emergencies.⁶

According to some legal authorities, as noted in the preamble to its 2003 EMTALA regulation, Centers for Medicare and Medicaid Services (CMS) gave hospitals a green light to tailor the Medical Screening Examination (MSE) to the patient's condition. If the MSE confirms there's no emergency, the hospital is free to seek payment from the patient before moving on to the treatment phase. Although it might not pursue this course, the hospital can refer a non-emergency patient elsewhere if there's no prospect for payment.⁶

Summary

The Centers for Medicare and Medicaid Services (CMS) has noted that the purpose for a Medical Screening Examination (MSE) is to determine with reasonable clinical confidence whether a medical emergency does or does not exist. The focus and extent of the MSE are dependent upon the presenting complaint and clinical findings. CMS has emphasized that a medical screening exam must be performed on an individual who comes to the hospital and that "it is never appropriate to simply "triage" an individual who is presenting for examination or treatment for an emergency medical condition."⁸

While the statute allows for a "physician or other qualified personnel" to perform the Medical Screening Examination (MSE), the requirements for "qualified" are quite

stringent. Non-physician examiners must be approved by the hospital Board of Directors and the hospital bylaws must reflect the approval for these personnel to provide a MSE. Further, if a physician is on duty in the ED the assumption is that s/he, and not other “qualified medical personnel”, is responsible for the MSE.

If an individual comes to a hospital's dedicated Emergency Department with an explicit or implicit request for examination or treatment, and the nature of the request makes it clear that the medical condition is not of an emergent nature, the hospital is only required to perform such screening to determine whether or not an Emergency Medical Condition (EMC) is present. However, the Medical Screening Examination (MSE) must be appropriately undertaken to determine whether an EMC exists, and should include any necessary testing to reach a rule-out diagnosis and the MSE must be performed in a non-discriminatory manner.

EMTALA no longer applies after the patient has been seen, medically screened, and it has been determined that an Emergency Medical Condition does not exist.

Sources Cited

1 American College of Emergency Physicians (ACEP): EMTALA

<http://www.acep.org/1.393.0.html>

2 EMTALA - COBRA STATUTE: 42 USC 1395 dd

<http://www.acutecare.com/statute.htm>

3 Emergency Nurses Association: “What is an appropriate Medical Screening Examination?” <http://www.ena.org/government/emtala/article2.asp>

4 EMTALA Regulations: 489.24 – “Special responsibilities of Medicare hospitals in emergency cases” <http://www.acutecare.com/regs.htm>

5 American College of Surgeons (ACS): Advocacy and Health Policy

<http://www.facs.org/ahp/views/emtala3.html>

6 AISHealth: “Limited Medical Screening Exam Eases EMTALA Compliance; CMS Rule Opens Door”

<http://www.aishealth.com/Compliance/ResearchTools/RMCLimitedMedicalEMTALA.html>

8 Hall, Render, Killian, Heath and Lyman: “Summary of Questions & Answers released by CMS regarding the new EMTALA requirements for provider-based entities”

http://www.hallrender.com/articles/articles_details.asp?article_index=68